

FILED  
RICHARD W. HAGEL  
CLERK OF COURT

AO 241 (Rev. 09/17)

2021 OCT 28 PM 3:02

2 21-CV-861

PETITION UNDER 28 U.S.C. § 2254 FOR WRIT OF  
HABEAS CORPUS BY A PERSON IN STATE CUSTODY

United States District Court	SOUTHERN DISTRICT OF OHIO Eastern Division COLUMBUS	Ohio
Name (under which you were convicted): William Daniel Peyatt		Docket or Case No.: 2017-186
Place of Confinement: Belmont Correctional Institution	Prisoner No.: A 743049	
Petitioner (include the name under which you were convicted)	Respondent (authorized person having custody of petitioner)	
v.		
William Daniel Peyatt      David Gray, Warden, BCI		
The Attorney General of the State of:		

## PETITION

1. (a) Name and location of court that entered the judgment of conviction you are challenging:

Monroe County Court of Common Pleas  
101 North Main Street Woodsfield, Ohio 43793

(b) Criminal docket or case number (if you know): 2017-186

2. (a) Date of the judgment of conviction (if you know): March 21, 2018

(b) Date of sentencing: March 27, 2018

3. Length of sentence: 22 1/2 years (270 Months)

4. In this case, were you convicted on more than one count or of more than one crime?  Yes  No

5. Identify all crimes of which you were convicted and sentenced in this case:

"Gross Sexual Imposition", under R.C. 2907.05(A)(4)  
"Attempted Gross Sexual Imposition", R.C. 2907.05(A)(4) / R.C.  
2923. and,  
"Disseminating Material Harmful to a juvenile", R.C.  
2907.31(A)(1)

6. (a) What was your plea? (Check one)

<input checked="" type="checkbox"/> (1)	Not guilty	<input type="checkbox"/> (3)	Nolo contendere (no contest)
<input type="checkbox"/> (2)	Guilty	<input type="checkbox"/> (4)	Insanity plea

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(b) If you entered a guilty plea to one count or charge and a not guilty plea to another count or charge, what did you plead guilty to and what did you plead not guilty to? I entered a plea of

Not Guilty on all counts in the Indictment.

And Continue to claim actual innocence on all Counts.

(c) If you went to trial, what kind of trial did you have? (Check one)

Jury  Judge only

7. Did you testify at a pretrial hearing, trial, or a post-trial hearing?

Yes  No

8. Did you appeal from the judgment of conviction?

Yes  No

9. If you did appeal, answer the following:

(a) Name of court: Seventh District Court of Appeals, Monroe Co. Ohio

(b) Docket or case number (if you know): 18 MO 0006

(c) Result: Upheled in part, overruled and vacated in part

(d) Date of result (if you know): August 28, 2019

(e) Citation to the case (if you know): State v. Peyatt, 2019-Ohio-3585

(f) Grounds raised: • Insufficient evidence to support conviction and Sentence for Count three, Attempted GSI.

• Trial court erred when it sentenced Mr. Peyatt to consecutive prison terms, where the record fails to support consecutive sentences. • Mr. Peyatt was deprived a fair trial under the fifth and Fourteenth Amendment to the U.S. Constitution when trial court failed to give a curative instruction.

(g) Did you seek further review by a higher state court?  Yes  No

If yes, answer the following:

(1) Name of court: The Supreme Court of Ohio

(2) Docket or case number (if you know): 19-1763

(3) Result: Declined to accept jurisdiction

(4) Date of result (if you know): April 14, 2020

(5) Citation to the case (if you know): \_\_\_\_\_

(6) Grounds raised: Trial court erred when it sentenced Mr. Peyatt to consecutive sentences, and Mr. Peyatt was deprived a fair trial, court applied a blanket policy regarding shackeling defendants and failing to give a curative instruction.

(h) Did you file a petition for certiorari in the United States Supreme Court?  Yes  No

If yes, answer the following:

(1) Docket or case number (if you know): \_\_\_\_\_

(2) Result: \_\_\_\_\_

(3) Date of result (if you know): \_\_\_\_\_

(4) Citation to the case (if you know): \_\_\_\_\_

10. Other than the direct appeals listed above, have you previously filed any other petitions, applications, or motions concerning this judgment of conviction in any state court?  Yes  No

11. If your answer to Question 10 was "Yes," give the following information:

(a) (1) Name of court: The Seventh District Court of Appeals, Monroe Co.  
 (2) Docket or case number (if you know): 18 MO 0006  
 (3) Date of filing (if you know): November 21, 2019  
 (4) Nature of the proceeding: App.R. 26 (B) Application to Reopen  
 (5) Grounds raised: Mr. Peyatt received ineffective assistance of counsel on his direct appeal  

- There was insufficient evidence to support the conviction on count Two.
- Insufficient evidence to support the conviction on counts Five and Six.
- Deprived a fair trial due to the cumulative effect of trial counsels ineffective assistance.
- Prosecutors comments poisoned the jury depriving Appellant a fair trial.
- Fifth Amendment violation, prosecutors comments directed to a failure to rebut evidence.

 (6) Did you receive a hearing where evidence was given on your petition, application, or motion?  
 Yes  No

(7) Result: Application to Reopen was Denied.

(8) Date of result (if you know): February 21, 2020

(b) If you filed any second petition, application, or motion, give the same information:

(1) Name of court: The Supreme Court of Ohio(2) Docket or case number (if you know): 2020-0584(3) Date of filing (if you know): May 4, 2020(4) Nature of the proceeding: Jurisdictional Appeal(5) Grounds raised: • Insufficient evidence in Counts Two, Five, and Six. • Denied a fair trial due to counsels cumulative effect of ineffective assistance. • Prosecutors remarks and statements made prejudiced Appellant depriving him a fair trial, and • Fifth Amendment violation where prosecutor directed closing arguments towards Appellants failure to rebut testimony. • The decision Feb. 21, 2020 also presented a double jeopardy issue.

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

 Yes  No(7) Result: Declined to Accept Jurisdiction(8) Date of result (if you know): July 21, 2020

(c) If you filed any third petition, application, or motion, give the same information:

(1) Name of court: Court of Common Pleas of Monroe County Ohio(2) Docket or case number (if you know): 2017-186(3) Date of filing (if you know): Nov. 2, 2020(4) Nature of the proceeding: PostConviction Petition(5) Grounds raised: Ineffective Assistance was Prejudical and deprived Defendant his rights to Effective assistance, The Compulsory Process, a Speedy Trial, Due Process, and a Fair trial. claim Two, Defendant was denied a fair trial by the Prosecutor, James Peters, when he Knowingly and intentionally testified "False" information to a jury, assuring them of honesty and Truthfulness.

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(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

Yes  No

(7) Result: Denied

(8) Date of result (if you know): Jan. 05, 2021

(d) Did you appeal to the highest state court having jurisdiction over the action taken on your petition, application, or motion?

(1) First petition:  Yes  No

(2) Second petition:  Yes  No

(3) Third petition:  Yes  No

(e) If you did not appeal to the highest state court having jurisdiction, explain why you did not:

12. For this petition, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground. Any legal arguments must be submitted in a separate memorandum.

**CAUTION: To proceed in the federal court, you must ordinarily first exhaust (use up) your available state-court remedies on each ground on which you request action by the federal court. Also, if you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.**

**GROUND ONE:** Grounds one-fifteen on Pages 7-31

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

(b) If you did not exhaust your state remedies on Ground One, explain why:

### Ground One

Mr. Peyatt was deprived his Fifth, Sixth, and Fourteenth Amendment Rights under the U.S. Constitution as a result of trial Counsel's Cumulative effect of ineffective, and unreasonable assistance.

#### Supporting facts

Three Continuances (for same reason) tolled time for Speedy trial against Mr. Peyatt. Counsel's Motion in Request for Co-counsel assistance Stating she is 'Required' to have assistance. Co-Counsel's Motion of Availability filed the morning trial started. Documents filed in Mr. Peyatt's Post Conviction Nov. 2, 2020 was not provided at trial and Alibi not investigated. Compulsory process requested in motions on Intent to claim Alibi and Bail Filed June 30 and July 11, 2017, was ultimately denied by Counsel.

- \* Direct Appeal of Ground one: Yes - App.R.26(B)
- \* Post Conviction Proceedings: Yes
- \* Motion/Petition: Petition to Vacate or Set aside judgment
- \* Name of Court Petition was filed: Common Pleas
- \* Location: 101 N. Main St. Woodsfield, Ohio
- \* Case No.: 2017-186, Denied, Jan, 5 2021

Did you receive a hearing? No

Did you appeal from the denial? Yes

Did you raise this issue in Appeal? Yes

Name of Court: Seventh Dist. Court of Appeals

Location: 131 West Federal St. Youngstown, OH.

Case No. 21 MO.0001, 1

Decision: Judgment of the Court of Common  
Please, Monroe County, is Affirmed.

Date of decision: Sept. 16, 2021

Other Remedies: Jurisdictional Appeal to  
the Ohio Supreme Court.

1st Appeal: Case No. 20-0584 July 21, 2020

Decision: Declined to Accept Jurisdiction

2nd Appeal: Case No.

Decision: Pending

## Ground Two

Trial Court deprived Mr. Peyatt of his Fifth, Sixth, and Fourteenth Amendment Rights under the U.S. Constitution where a blanket policy was applied in regard to the shackling of all defendants and failing to give a curative instructions to the jury.

### Supporting Facts

Trial Transcript Shows objection was made as Mr. Peyatt was paraded through the crowded hallway of prospective jurors and brought into the Courtroom in restraints (wrists, leg shackles, and belly chain). The Honorable, Julie R. Selmon, said she would give a curative instructions to the jury and failed to do so. Mr. Peyatt posed no threat, and was not being held in custody without bail.

\* Direct Appeal of Ground Two: Yes

Post Conviction Proceedings: No

Other Remedies: Jurisdictional Appeal to the Ohio Supreme Court

• Case No. 2019-1763 April 14, 2020

Decision: Declined to accept jurisdiction

### Ground Three

Trial Counsel failed to object to the way in which the jury was selected and failed to seat an unbiased jury. Thus depriving Mr. Peyatt of his Fifth, Sixth, and Fourteenth Amendment Rights to the U.S. Constitution.

#### Supporting Facts

March 19 2018 Trial Transcripts, Voir dire. Juror No. 2, Alissa Miller previously served as a juror against Mr. Peyatt in 2005 (Tr. 120 see also Tr. 606 prior conviction in 2005). Alissa Miller knows State's witness Christina Dick as she is Alissa Miller's Mom's Supervisor at GMN Tri-County, and this case involving rape made her sick to her stomach (Tr. 153) K.B. Sees Counselor at GMN

Juror No. 12 Denzil Minger is a Nurse at Wetzel County Hospital where the alleged victim K.B. reported "she may have been raped", and the State's Expert witness, Tad Green is Denzil Minger's supervisor (Tr. 84-85) Denzil Minger identified himself as a supervisor at the hospital (Tr. 106-108). Denzil went to school with the investigating officer and the alleged victim's father (Tr. 59, 63)

Additional Facts in Support presented in Memorandum.

\* Direct Appeal of Ground Three: Yes App.R.26(B)

Post Conviction Proceedings: No

Other Remedies: Jurisdictional Appeal to  
the Ohio Supreme Court.

\* Case No. 20-0584 July 21, 2020

Decision: Declined to accept jurisdiction

#### Ground Four

Mr. Peyatt's Fifth and Fourteenth Amendment Rights Under the U.S. Constitution was Violated as the prosecutor used his opening statements as an opportunity to poison the jury

#### Supporting Facts

March 19, 2018 Trial Transcripts. The prosecutor made allegations against Mr. Peyatt that was 'not' supported in the record and was Substantially prejudicial to Mr. Peyatt.(Tr.251 "even though we may suspect there could have been a rape prior to thirteen,...,we intend to hone in on the one prior to her going to Wetzel County Hospital.") Mr. Peyatt was only charged with one Rape.

Again at Tr.229 he stated, "and it was at this time Keysha indicated to her Mother that the Defendant had been raping her for a period of time" and, inappropriate touching for many years prior to that.(Tr. 230)

Tr. 45, 48, 247-The prosecutor boasted about his "thirteen years of experience as a prosecutor" and prosecuting these types of cases.(Tr. 535 further boasting). He further proclaimed "consistencies" 9 times in his opening; Tr. 235, 236, 238, 244.

\* Direct Appeal on Ground Four: Yes App.R.26(B)

Post Conviction Proceedings: Yes

Motion/Petition: Petition to Vacate or Set aside Judgment

Court Petition was Filed in: Court of Common Pleas

Location: 101 North Main St. Woodsfield, OH

Case No. 2017-186 Denied Jan. 5, 2021

Did you receive a hearing: No

Did you Appeal from denial: Yes

Did you raise this issue in Appeal: Yes

Name of Court: Seventh Dist. Court of Appeals

Location: 131 West Federal St. Youngstown, OH

Case No. 21 MO 0001 Sept. 16, 2021

Decision: Affirmed Judgment of trial court

Other Remedies: Jurisdictional Appeal in the Ohio Supreme Court

1st. Appeal, Case No. 20-0584 July 21, 2020

Decision: Declined to accept Jurisdiction

2nd. Appeal, Case No.

Decision: Pending

Mr. Peayatts Fifth and Fourteenth Amendment Rights under the U.S. Constitution was violated, as the prosecutor knowingly and intentionally, presented false information to the jury, A newly discovered document, surfaced showing the certified version of the states expert witness facts, supporting facts, A newly discovered document, showing the prosecutor's pretrial preparation, the certified version of the states expert witness had experienced between 2013 and 2016 newly discovered documents demonstrate that the prosecutor pretrial preparation the alleged victims allegations had remained constant is a falsification of what the documents say, The prosecutorial pretrial preparation, "Loansifications in the allegations a minimum of 9 times in his opening and an additional 7 times in his closing arguments and based on his honesty and truthfulness, documents filed in Postconviction 11-22-20 see Grounds four, six, and seven of Mr. Peayatts habeas corpus memorandum.

\* Direct Appeal on Ground Five: Yes App.R.26(B)

Postconviction Proceedings: Yes

Motion/Petition: Petition to Vacate or Set aside judgment

Court Petition was filed in: Court of Common Pleas

Location: 101 N. Main St. Woodsfield, Ohio

• Case No. 2017-186 Denied Jan. 5, 2021

Did you receive a hearing: No

Did you Appeal from denial: Yes

Did you raise this issue in Appeal: Yes

Name of Court: Seventh Dist. Court of Appeals

Location: 131 West Federal St., Youngstown, OH

• Case No. 21 MO 0001 Sept. 16, 2021

Decision: Affirmed Judgment of trial Court

Other Remedies: Jurisdictional Appeal to the  
Ohio Supreme Court

• 1st Appeal, Case No. 20-0584 July 21, 2020

Decision: Declined to accept jurisdiction

• 2nd. Appeal, Case No.

Decision: Pending

## Ground Six

Mr. Peyatts' Fifth and Fourteenth Amendment Rights under the U.S. Constitution was violated as the prosecutor used his closing arguments as an opportunity to poison the jury

### Supporting Facts

March 21, 2018 Trial Transcripts. In the States closing arguments, the prosecutors statements was not supported in the record.

Tr. 557 "The bathroom picture there, it used to have a door on it, just where she said that she had been forced to touch his penis."

Seven times the prosecutor proclaimed the accusations by the alleged victims had remained consistent. (Tr. 528, 529, 531, 555 and 557.)

The Prosecutor further insured the jury, on multiple occasions, of his honesty and truthfulness with them. (Tr. 525, 529, 533, 553)

The Prosecutor argued on Mr. Peyatts failure to rebut evidence and call witnesses (Tr. 525, 535, 554, 556), when Mr. Peyatt was the only person who could present rebuttal, or contradictory testimony.

\* Direct Appeal on Ground Six: Yes App.R. 26 (B)

PostConviction Proceedings: Yes

Motion/Petition: Petition to Vacate or Set aside judgment

Court Petition was filed in: Court of Common Pleas

Location: 101 N. Main St., Woodsfield, Ohio

• Case No. 2017-186 Denied Jan 5, 2021

Did you receive a hearing: No

Did you appeal from denial: Yes

Did you raise this issue on appeal: Yes

Name of Court: Seventh Dist. Court of Appeals

Location: 131 West Federal St., Youngstown, OH

• Case No. 21 MO 0001 Sept. 16, 2021

Decision: Affirmed Judgment of trial Court

Other Remedies: Jurisdictional Appeal to the  
Ohio Supreme Court

• 1st. Appeal, Case No. 20-0584 July 21, 2020

Decision: Declined to accept Jurisdiction

• 2nd. Appeal, Case No.

Decision: Pending

## Ground Seven

Fifth Amendment Violation under the U.S. Constitution where the prosecutor directed his closing arguments towards Mr. Peyatts' failure to contradict or rebut said allegations.

### Supporting Facts

March 21, 2018 Trial Transcripts, Prosecutors argued on Mr. Peyatts' failure to contradict and rebut the allegations, as well as Mr. Peyatts' failure in calling additional witness and presenting testimony in his defense.

(Tr. 525.) "I would submit to you though, that all we heard during this trial is exactly what did happen to them."

(Tr. 525.) "But there is certainly nothing in the record that indicates that their story could not have happened or is in anyway, untrue."

(Tr. 535.) All these things could have happened. He talked about that. And you havnt been presented with anything that says that that may not have happened."

(Tr. 554.) "...it's the job to defend him. They can play These videos. They can present testimony of other witnesses..." (Videos was not presented at Trial.)

(Tr. 556.) "She told you her story, and you have heard no evidence to 'contradict' that."

\* Direct Appeal of Ground Seven: Yes App.R.26(B)

Postconviction Proceedings: No

Other Remedies: Jurisdictional Appeal to the  
Ohio Supreme Court.

\* Case No. 20-0584 July 21, 2020

Decision Declined to accept Jurisdiction

### Ground Eight

Trial Court erred in sentencing Mr. Peyatt to consecutive prison terms because the record clearly and convincingly does not support the findings that consecutive sentences are not disproportionate to Mr. Peyatt's conduct alleged in this case.

#### Supporting facts

Count one A.B. alleged Mr. Peyatt inappropriately touched her on two occasions lasting about five seconds each as she turned and walked away

Count Two A.B. recanted the allegations

Count four A.B. said Mr. Peyatt showed her pictures of his penis on his cell phone but had no knowledge of the tattoo on Mr. Peyatt's penis.

Count five and six K.B. presented NO testimony alleging she was under the age of 14, specifically 10-12 years old (2009-2012) and she admitted she lied in the investigation about these allegations.

(See Memorandum in Support of Habeous Corpus)

\* Direct Appeal on Ground Eight: Yes

Post Conviction Proceedings: No

other Remedies: Jurisdictional Appeal, OH, Supreme Court

\* Case No. 19-1763 April 14, 2020

Decision: Declined to accept Jurisdiction

## Ground Nine

The Cumulative effect of errors constitute a denial of Mr. Peyatts Constitutional Rights under the Due Process Clause

### Supporting Facts

Counsel's ineffective and incompetent assistance in her failures to investigate and prepare for trial. Her actions denying Mr. Peyatt a Speedy trial and the Compulsory process as well as a fair trial by an impartial jury.

Prosecutorial Misconduct as the Prosecutor boasted his experience and his honesty. He further Mentioned Facts not in the record to boast his case and argued on Mr. Peyatts failure to present a defense

Trial Court imposing Consecutive Sentences and applying a blanket policy requiring all defendants that can't post bail to be shackled without justification or providing a curative instructions.

And Trial courts failure to comply with the order of the Appellate court to overturn a conviction.

\* Direct Appeal of Ground Nine: No (Not Cumulatively)

Post Conviction Proceedings: No

Other Remedies: Argued independantly, Not on the cumulative effect of all errors.

## Ground Ten

Appellate Counsel was ineffective in their representation, and preparation of Mr. Peyatt's direct appeal. A denial of the Equal Protection Clause

### Supporting Facts

Mr. Peyatt was appointed new representation at each stage in preparing and presenting his Direct Appeal.

Christina Madriguera, #0072 555, filed his merit brief.

She presented false information in the facts of the case stating that Mr. Peyatt committed the offenses while on Community Control.

Further, on page 10 of the Merit Brief regarding Counts Five and Six, Counsel fails to argue Statute under the Specific Charge as she did on page 8 in regard to Count one and two. Counsel Madriguera withdrew herself and was transferred to the Ohio Supreme Court.

Jonathan Tewart, #0085171, was then appointed to file Mr. Peyatt's Reply Brief. The Ohio Public Defender's Office relieved him of his duties for unknown reasons.

Joseph Medic, Chief Counsel of the Ohio

Public Defenders Office presented Oral Arguments.

The record fails to support Mr. Peyatt's convictions.

\* Direct Appeal of Ground Ten: Yes App.R.26 (B)

PostConviction Proceedings: No

Other Remedies: Jurisdictional Appeal to the  
Ohio Supreme Court

Case No. 20-0584 July 21, 2020

Decision: Declined to accept Jurisdiction

## Ground Eleven

Insufficient evidence as count Five is not supported by a manifest weight of evidence. A deprivation of the Fourteenth Amendment Due Process Clause

### Supporting Facts

The alleged victim presented no testimony alleging the specific time period (2009-2012) or being under the age of Thirteen (13).

The alleged victim did however admit that she was untruthful during the investigation (Id.

March 20, 2018, Cross examination by Defense counsel, TR. 406-407.

Documents presented in Mr. Peyatts Post-Conviction Petition filed Nov. 2, 2020 show that "it was alleged" Mr. Peyatt was living in Monroe County until "just prior to K.B. turning 13 (2012) and he moved away and returned prior to her turning 15" (Harmony House Report). Mr. Peyatts records show Mr. Peyatt lived in Summersville West Virginia and Cowen West Virginia until 2014. Four (4) Misdemeanor arrest, House arrest Twice, Fathered 3 children (2009, 2011, and 2012), Work records w/ time sheet, Bank statements, Hospital reports, Family Court records, and so on.

\* Direct Appeal on Ground Eleven Yes App.R. 26 (B)

Post Conviction Proceedings: Yes

Motion/Petition: Petition to Vacate or Set aside judgment

Court Petition was filed in: Court of Common Pleas

Location: 101 N. Main St. Woodsfield, Ohio

\* Case No. 2017-186 Denied Jan 5, 2021

Did you receive a hearing: No

Did you Appeal from denial: Yes

Did you raise this issue on Appeal: Yes

Name of Court: Seventh Dist. Court of Appeals

Location: 131 West Federal St. Youngstown Ohio

\* Case No. 21 MO 0001 Sept. 16, 2021

Decision: Affirmed Judgment of Trial Court

Other Remedies: Jurisdictional Appeal to the Ohio Supreme Court.

\* 1st Appeal, Case No. 20-0584 July 21, 2020

Decision: Declined to accept Jurisdiction

2nd Appeal, Case No.

Decision: Pending

## Ground Twelve

In sufficient evidence as Count Six is not supported by a manifest weight of the evidence. A deprivation of the Fourteenth Amendment Due Process Clause.

### Supporting facts

The alleged victim presented no testimony alleging the specific time period (2009-2012) or being under the age of thirteen (13).

The alleged victim did however admit that she was untruthful during the investigation (Id. at March 20, 2018, Cross Examination by Defense Counsel), Tr. 406-407.

Documents presented in Ms. Peyatts Post Conviction Petition filed Nov. 2, 2020 show that "it was alleged" that Mr. Peyatt was living in Monroe County Ohio until "just prior to K.B. turning 13 (2012) and he moved away and returned prior to her turning 15 (Oct. 2014)" See Harmony House Report.

Mr. Peyatts records show that Mr. Peyatt lived Summersville, West Virginia, and Cowen, West Virginia until 2014. Four (4) Misdemeanor arrest, House arrest twice, Fathered 3 children (2009, 2011, 2012), work records with time sheet, Bank Statements, Hospital reports, Family Court records, and so on.

\* Direct Appeal on Ground Twelve: Yes App. R. 26(B)

Post Conviction Proceedings: Yes

Motion/Petition: Petition to vacate or set aside Judgment

Court petition was filed in: Court of Common Pleas

Location: 101 N. Main St. Woodsfield, Ohio

\* Case No. 2017-186 Denied Jan. 5, 2021

Did you receive a hearing: No

Did you Appeal from denial: Yes

Did you raise this issue on Appeal: Yes

Name of Court: Seventh Dist. Court of Appeals

Location: 131 West Federal St. Youngstown, Ohio

\* Case No. 21 MO 0001 Sept. 16, 2021

Decision: Affirmed judgment of Trial Court

Other Remedies: Jurisdictional Appeal to the Ohio Supreme Court.

\* 1st. Appeal, Case No. 20-0584 July 21, 2020

Decision: Declined to accept jurisdiction

\* 2nd. Appeal, Case No.

Decision: Pending

In sufficient evidence as Count two is not supported by a manifest weight of evidence. A deprivation of the Fourteenth Amendment Due Process Clause  
I a Bill of Particulars, the State set forth the "specific" conduct alleged to constitute the offense charged.  
The alleged victim was asked "specifically" at trial, by the prosecutor, if Ms. Feyaff  
committed such an act. The alleged victim  
testimony opposes such allegation.  
IA was alleged, by the State, that the  
alleged victim's sister witnessed said conduct.  
The alleged victim's sister testified that she  
never witnessed anything between the  
alleged victim and Ms. Feyaff. (ID. March 19-21,  
2018, T1, 308, 311, 353, and 387).  
\* Direct Appeal on Ground Thirteen: Yes App.R.26 (8)  
Postconviction Proceedings: No  
Ohio Supreme Court  
Office Remedies: Judicial Appeal to the  
Decision: Declined to accept jurisdiction  
Case No. 20-0584 July 21, 2020

## Ground Fourteen

Appellate Courts decision to Affirm the lower Courts Conviction, and Sentence, as to the Second Count in the indictment, for the Conduct set forth in Count one pursuant to the States Response for a Bill of Particulars, established, and violated, the Double Jeopardy Clause.

### Supporting Facts

The State alleged two separate accounts of inappropriate conduct in the first Count of the indictment and the Bill of Particulars.

The State's opening statements also established that Count one was in regard to two separate acts on atleast one occasion each, (Tr. 249)

The alleged victim alleged Two acts that lasted about five seconds each. (Tr. 345, 347)

The conduct the State alleged in Count two was an offense of the same charge as Count one, But, the conduct was specific, and different than that in Count one.

The alleged victim testified that that specific conduct 'did not' happen. (Tr. 353)

The one alleged to have witnessed said act testified that she did not witness anything. (Tr. 387)

- \* Direct Appeal on Ground Fourteen: No
- Post Conviction Proceedings: No
- Other Remedies: Jurisdictional Appeal to the Ohio Supreme Court
- Case No. 20-0584
- Decision Declined to accept jurisdiction

Note: Mr. Peyatt discovered this violation in the courts response in State v. Peyatt, 2020-Ohio-1103 at 979.

Mr. Peyatt addressed his findings in his appeal to the Supreme Court in the argument of insufficient evidence.

## Ground Fifteen

### Due Process Violation in Trial Courts

Failure to overturn the Attempted Gross Sexual Imposition Conviction and Vacate the consecutive eighteen (18) month sentence imposed against Mr. Peyatt.

### Supporting Facts

State v. Peyatt, 2019-Ohio-3585 (decision Aug. 28, 2019) *Id.* at 22 and 44. The Seventh District Appellate Court overturned the conviction and ordered the sentence to be vacated.

\* Direct Appeal of Ground fifteen: No

Post Conviction Proceedings: No

Other Remedies: Letter sent to Monroe County Clerk of Courts addressing the Appellate Courts decision. There response was the Supreme Courts decision in Case No. 19-1763 filed April 14, 2020. They sent Mr. Peyatt a copy of said decision in response to him asking why the Appellate Courts decision was not upheld vacating his conviction and sentence on Count three, Attempted Gross Sexual Imposition.

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13. Please answer these additional questions about the petition you are filing:

- (a) Have all grounds for relief that you have raised in this petition been presented to the highest state court having jurisdiction?  Yes  No

If your answer is "No," state which grounds have not been so presented and give your reason(s) for not presenting them:

*"Nine" was presented independently not Cumulatively  
"Fourteen" was presented in arguments in reference to Count Two  
in the Supreme Court, and, Fifteen was an order given  
by the Appellate court that Trial court wont answer to,*

- (b) Is there any ground in this petition that has not been presented in some state or federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them:

*Same as above in 13(2)*

14. Have you previously filed any type of petition, application, or motion in a federal court regarding the conviction that you challenge in this petition?  Yes  No

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, the issues raised, the date of the court's decision, and the result for each petition, application, or motion filed. Attach a copy of any court opinion or order, if available.

15. Do you have any petition or appeal now pending (filed and not decided yet) in any court, either state or federal, for the judgment you are challenging?  Yes  No

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised.

*Ohio Supreme Court, Jurisdictional Appeal  
Deprivation of U.S. Constitutional Rights, 4, 5, and 14  
Deprivation of the Constitutional Rights of Ohio under Article  
1, section 10 and 16  
Appeal resulting from denial of a postconviction petition*

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16. Give the name and address, if you know, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing: Mark Moffison 117 North Main St, Woodsfield Ohio 43793 (Public defenders office)

(b) At arraignment and plea: None

(c) At trial: Kelli R. Regel 117 North Main St. Woodsfield Ohio 43793  
R. Aaron Miller Po. Box 1287 Stubenville, OH 43952

(d) At sentencing: Kelli R. Regel 117 North Main St. Woodsfield  
Ohio 43793

(e) On appeal: Christina Madriguesa #0072555, Johnathan Stewart,  
and Joseph Medici, Ohio Public Defenders, 250 E. Broad St Columbus, Ohio

(f) In any post-conviction proceeding: Proceeded pro se, forma pauperis

(g) On appeal from any ruling against you in a post-conviction proceeding: Proceeded Pro Se,  
forma pauperis

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging?  Yes  No

(a) If so, give name and location of court that imposed the other sentence you will serve in the future:

(b) Give the date the other sentence was imposed:

(c) Give the length of the other sentence:

(d) Have you filed, or do you plan to file, any petition that challenges the judgment or sentence to be served in the future?  Yes  No

18. TIMELINESS OF PETITION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2244(d) does not bar your petition.\*

Time on filing Appeals in the Seventh district and in the Supreme Court of Ohio was all met on time and the latest Appeal Filed in the Supreme Court has not yet been decided. (sure they will decline again)

Postconviction was filed late because the Trial record

Clearly did not support 3 of Mr. Peyatts convictions. When the state failed to agree on those facts, Mr. Peyatt made more attempts to gain the evidence to prove "actual innocence". The information was provided in July and September of 2020, and on Nov. 2, 2020 a postconviction was filed proving actual innocence.

Mr. Peyatt does not have a law degree, and even with the restrictions in the prison system brought on by the Corona virus (Covid-19) pandemic. Mr. Peyatt made sure to "exhaust all remedies" before filing a Habeas Corpus petition.

Mr. Peyatt feels he has been denied the Equal protection clause based on his financial status. The record demonstrates he has not only been treated unfair, but is in fact, unable to present his case to the courts as they would expect. He has ask for assistance and presented the issues to the best of his abilities.

Justice requires a Fair assessment of Mr. Peyatts case from an outside source. Where the lower courts fail to give a fair assessment of THE FACTS.

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\* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2244(d) provides in part that:

- (1) A one-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of -
  - (A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;
  - (B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such state action;
  - (C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
  - (D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

AO 241 (Rev. 09/17)

- (2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

Therefore, petitioner asks that the Court grant the following relief:

*overturn Said Convictions  
and Vacate the 270 month Sentence imposed on  
Mr. Peyatt to be Served Consecutively*

or any other relief to which petitioner may be entitled.

*William Peyatt, Pro Se*

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Petition for Writ of Habeas Corpus was placed in the prison mailing system on Oct. 20, 21 (month, date, year).

Executed (signed) on Oct. 20, 2021 (date).

*William Peyatt*

Signature of Petitioner

If the person signing is not petitioner, state relationship to petitioner and explain why petitioner is not signing this petition.

# Court of Appeals of Ohio

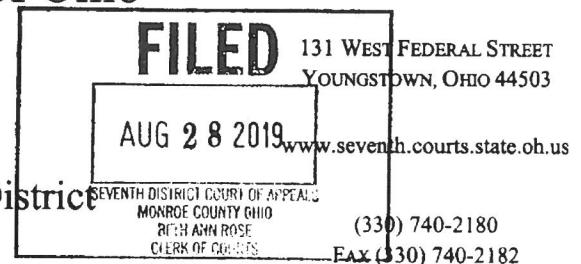
JUDGES  
GENE DONOFRIO  
CHERYL L. WAITE  
CAROL ANN ROBB  
DAVID A. D'APOLITO

COURT ADMINISTRATOR  
JEFFREY E. HENDRICKSON, ESQ.

MEDIATOR / MAGISTRATE  
AARON HIVELY, ESQ.



## Seventh Appellate District



August 26, 2019

Ms. Beth Ann Rose  
Clerk of Courts  
Monroe County Courthouse  
101 North Main Street  
Woodsfield, Ohio 43724

**Re: State of Ohio, Plaintiff-Appellee vs William D. Peyatt, Defendant-Appellant**  
**Case No.: 18 MO 0006**

TO THE CLERK OF COURTS:

By direction of the court, you are hereby authorized to enter on the docket (not journal) of the Court of Appeals the decision of this Court in the above-captioned case as evidenced by the following entry:

**"August 28, 2019. Judgment of the Court of Common Pleas of Monroe County, Ohio, is affirmed in part; reversed and vacated in part. Costs waived. See Opinion and Judgment Entry."**

You are hereby authorized to file and spread upon the journal of this Court the enclosed journal entry in the above-captioned case.

Very truly yours,

Kim M. Moses  
Secretary

/kmm

cc(w/enc.): Judge Julie R. Selmon

Enclosures

